

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

HL

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/043, 433 01/07/99 MUNDSCHENK

D 15050.4.2

EXAMINER

HM22/0228

PHILIP M GOLDMAN
FREDRIKSON & BYRON
1100 INTERNATIONAL CENTRE
900 2ND AVENUE SOUTH
MINNEAPOLIS MN 55402-3397

BAWA, R

ART UNIT

PAPER NUMBER

1615

10

DATE MAILED:

02/28/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/043,433	Applicant(s)	MUNDSCHENK	
	Examiner BAWA	Group Art Unit 1615		

Responsive to communication(s) filed on Nov 1, 1999

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-20 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 6

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

Art Unit: 1615

Receipts acknowledged of the Request for Extension of Time and Amendment, both filed November 01, 1999.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 11-18 remain rejected under 35 U.S.C. 102(b) as being anticipated by Jasse et al 3,976,223.

Applicant's arguments filed November 01, 1999 have been fully considered but they are not persuasive.

It is the position of the examiner that the language "stable formulation" does not limit the scope to a formulated, stored and delivered single formulation.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

While applicant may be his or her own lexicographer, a term in a claim may not be given a meaning repugnant to the usual meaning of that term. See *In re Hill*, 161 F.2d 367, 73

Art Unit: 1615

USPQ 482 (CCPA 1947). The term "stable" in claim 1 is used by the claim to mean "a single formulation," while the accepted meaning is "a chemically stabilized formulation."

The language "stable" would not limit the claims to the desired single, unitary, stable formulation.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Jasse et al.

Applicant urges that the language "stable" limits the scope of the claims to a unitary formulation. It is the position of the examiner that the language implies chemical stability and would not aid in distinguishing over Jasse et al. It remains the position of the examiner that absent the presentation of a showing of some unusual and/or unexpected result of the use of specific concentration of ingredients, it would be *prima facie* obvious to one of ordinary skill in this art at the time of the invention to readily and by routine experimentation, determine suitable amounts.

Art Unit: 1615

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raj Bawa whose telephone number is (703) 308-2423. The examiner can normally be reached on Tues-Fri. from 7:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

‘Page/sg

February 12, 2000

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600
